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Federal Communications Commission

DA 99-1444

DISPATCHED BY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	MM Docket No. 96-249 ✓
Amendment of Section 73.202(b),)	RM-8926
Table of Allotments,)	RM-9068
FM Broadcast Stations.)	
(St. Maries, Idaho and Spokane, Washington))	
)	
In re Application of)	
)	
Spokane Public Radio, Inc.)	File No. BPED-961210MC
Station KSFC(FM), Spokane, Washington)	
)	
For Construction Permit to Modify)	
Licensed Facilities)	
)	
In re Application of)	
)	
Wilson Creek Communications, L.L.C.)	File No. BPH-970227ID
Station KVYF(FM), Wilson Creek, Washington)	
)	
For Construction Permit to Modify)	
Licensed Facilities)	
)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 96-259,
Table of Allotments,)	RM-8970
FM Broadcast Stations.)	RM-9069
(Moscow, Post Falls, and Troy, Idaho))	RM-9070

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 29, 1999

Released: October 13, 1999

By the Chief, Allocations Branch:

1. The Commission has before it *Notices of Proposed Rule Making* in two related dockets, MM Docket No. 96-249, 11 FCC Rcd 17,279 (1996) ("*Notice I*"), and MM Docket No. 96-259, 11 FCC Rcd 22, 542 (1997) ("*Notice II*"). *Notice I* was issued in response to a petition for rule making (RM-8926) filed by Pentacle Investments, Inc. ("Pentacle") requesting the allotment of Channel 221A to St.

Maries, Idaho, for a first local FM and second local aural service. *Notice II* was issued in response to a petition for rulemaking (RM-8970) filed by Darin L. Siebert ("Siebert") requesting the allotment of Channel 277A to Moscow, Idaho, as a fifth local aural service.

2. Two FM stations in the state of Washington filed conflicting applications in MM Docket 96-249. First, Spokane Public Radio, Inc. ("SPR") filed an application to upgrade its Station KSFC(FM), Channel 220A, Spokane, Washington, to Channel 220C2 (File No. BPED-961210MC) that conflicts with Pentacle's rulemaking petition to allot Channel 221A at St. Maries. Since SPR's application was filed after Pentacle's rulemaking petition but before the comment deadline established in *Notice I* for MM Docket 96-249, it was accepted as a counterproposal in that docket.¹ Second, Wilson Creek Communications, L.L.C. ("WCC") filed an application (BPH-970227ID) to implement an upgrade of its Station KVYF(FM), Wilson Creek, Washington, authorized in MM Docket 95-163, from Channel 277C3 to Channel 278C1, at reference coordinates different from those adopted in that rulemaking proceeding.² As explained below, this application conflicts with an alternate channel that had been suggested by SPR as a means to resolve the conflict in MM Docket 96-249 between Pentacle's rulemaking petition and SPR's application. Since WCC's application was filed after the alternate channel had been suggested by SPR and after the deadline for filing counterproposals in MM Docket 96-249, it has been held in abeyance pending the outcome of this proceeding.³

3. *MM Docket No. 96-249.* In response to *Notice I*, SPR filed comments objecting to the Channel 221A proposal for St. Maries, which conflicted with SPR's application to upgrade its facilities on Channel 220C2. SPR also suggested that Channel 278A could be allotted at St. Maries in compliance with the minimum distance separations requirements of Rule Section 73.207(b) as well as with city grade coverage requirements of Rule Section 73.315(a). As mentioned above, this alternative proposal to allot Channel 278A to St. Maries in lieu of Channel 221A conflicts with WCC's application for Channel 278C1.

¹ The Commission gave notice of such treatment in Public Notice, Report No. 2186, August 10, 1997. *See also Amendment of the Commission's Rules To Permit FM Channel and Class Modifications by Application*, 8 FCC Rcd 4735, 4738 (Comm. 1993) (An application that conflicts with an earlier filed rulemaking petition will be considered as a counterproposal if the application is filed prior to the deadline established for filing counterproposals to the rulemaking petition.). *See also Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments ("Conflicts")*, 7 FCC Rcd 4917 (Comm. 1992), *recon.*, 8 FCC Rcd 4743 (Comm. 1993).

² *See Wilson Creek, Washington*, 11 FCC Rcd 11842 (Allocations Br. 1996).

³ *See FM Channel and Class Modifications by Application*, 8 FCC Rcd at 4739, para. 18. *See also Conflicts*, 7 FCC Rcd 4917 (1992).

4. In responding to SPR's opposition, Pentacle acknowledged that SPR's alternate proposal to allot Channel 278A at St. Maries in lieu of Channel 221A, hypothetically, would meet the Commission's engineering criteria. It contends, however, that there is no usable transmitter site available. Pentacle alleged that, on the basis of its own on-site inspection of the available area in which to locate a site, there is no road access nor is there any electrical power. SPR responds by noting that the entity cited by Pentacle as the owner of the site area is not the actual owner of the land area in question, and that Pentacle had not contacted that landowner for any reason including a possible lease by SPR. However, Pentacle later filed a copy of a letter (as a supplement to its reply comments, which we accept as useful to a proper resolution of this proceeding) by a land agent for the owner, stating that "(they) are not interested in leasing or selling" the land. Pentacle finally asserts that Channel 278A cannot be used at any site. It states that the nearest site location where electricity is reasonably available that would also meet the spacing requirements could not be used, because city grade coverage could not be achieved and terrain blockage would occur. In any event, Pentacle argues that its Channel 221A proposal for a first local FM broadcast service at St. Maries should take precedence over SPR's Channel 220C2 proposal to improve the facilities of one of its two NCE-FM stations in Spokane.

5. WCC filed reply comments to SPR's application that was treated as a counterproposal. WCC notes that it had been authorized to upgrade its station to Channel 278C1 in MM Docket No. 95-163 and filed an application to implement this upgrade. WCC opposes SPR's alternative suggestion of Channel 278A because it would conflict with WCC's upgrade application for Channel 278C1. WCC notes, however, that its application would be cut-off from consideration by SPR's application because of WCC's later filing. It advises that should the Commission decide to grant SPR's application, then it should also grant WCC's application under the policy of resolving conflicts such that all proposals may be accommodated. WCC suggests that a site restriction to the east of St. Maries would still permit Channel 278A to provide city grade coverage of St. Maries and would allow both applications to be granted. WCC, therefore, recommends that its suggestion of a restricted site for St. Maries be adopted.

6. *MM Docket No. 96-259.* Siebert filed comments in this proceeding stating that it will apply for Channel 277A at Moscow, if allotted, and will promptly construct upon grant of the allotment. Other comments filed in response to *Notice II* included two counterproposals. First, Rook Broadcasting of Idaho, Inc. ("Rook"), licensee of Station KCDA(FM), Coeur d'Alene, Idaho, Channel 276C2, filed a counterproposal to change its community of license to Post Falls, Idaho and to upgrade that station at its present site. Rook counterproposed the allotment of Channel 276C1 at Post Falls to provide a first local aural service, the deletion of Channel 276C2 at Coeur d'Alene, and modification of its license to specify operation on Channel 276C1 at Post Falls. Rook's proposed upgrade and reallocation of Channel 276C1 at Post Falls conflicts with the proposed allotment of Channel 277A at Moscow. The second counterproposal was filed by Radio Palouse, Inc. ("RPI") requesting the allotment of Channel 277A at Troy, Idaho, in lieu of Moscow. RPI's proposed allotment of Channel 277A at Troy conflicts

with proposed Channel 277A at Moscow. In addition, the counterproposals filed by both RPI and Rook are mutually exclusive with each other because Rook's proposed upgrade and reallocation of Channel 276C1 at Post Falls is short-spaced under the Commission's minimum distance separation rules to the RPI's proposed allotment of Channel 277A at Troy. Rook's counterproposal also provides the connection between the two dockets, wherein its proposal to allot Channel 276C1 at Post Falls in MM Docket No. 96-259 conflicts with the alternate channel suggestion in MM Docket No. 96-249 to allot Channel 278A at St. Maries. The staff noted these conflicts and issued a public notice not only accepting Rook and RPI's filings as counterproposals in MM Docket 96-259 but also treating Rook's pleading as a counterproposal in MM 96-249.⁴ We agree that the RPI and Rook pleadings were properly accepted as counterproposals in MM Docket No. 96-259 but now recognize that RPI's filing should not have been treated as a formal counterproposal in MM Docket 96-249 because it was filed after the counterproposal deadline in that proceeding. Nevertheless, for administrative convenience, we have decided to consolidate these dockets so that the various conflicts can be resolved at the same time.

7. In an effort to demonstrate that Post Falls is a community for allotment purposes, in its comments Rook lists a number of attributes indicative of that status. It states that Post Falls is "located at the center of the largest commercial hub in the state of Idaho" and had a 1996 population of 12,595, having experienced a growth of 43% since 1990 when its U.S. Census population was 7349. Rook notes that Post Falls has a mayor-city council form of government and has police and fire departments, an ambulance service, a food bank, a public library, a park and recreation department, and a post office. There is a full range of secondary schools including a high school with approximately 4000 students. Post Falls has 26 churches. Its economy consists of timber, lumber, and agricultural production, light industry, electronic and computer production, and others. Rook provides a list of Post Falls' largest employers, each of the top ten employing at least 100 employees.

8. Rook notes that Coeur d'Alene, proposed to lose its Channel 276C2 allotment to Post Falls, is served by an AM station and has a vacant allotment, Channel 272A. Also noted by Rook is that even though Coeur d'Alene would lose an allotment, should the counterproposal be adopted, no reception service to that community would be lost because the reference point for Post Falls is the currently licensed site for Station KCDA(FM) at Coeur d'Alene. Rook advises that, although Coeur d'Alene had a 1990 Census population of 24,563 (more than three times that of Post Falls), its growth rate is estimated to be less than that of Post Falls. As to Moscow, Rook notes that while it had a 1990 Census population of 18,519, it is already served by four local aural services. Rook also points to the wider coverage of the Class C1 facility proposed at Post Falls than that of the Moscow Class A allotment. Rook states its intention to apply for Channel 276C1 at Post Falls, if allotted, and to construct a station promptly and operate it on that channel.⁵

⁴ See *Public Notice*, Report No. 2186, April 10, 1987, at 2.

⁵ Rook provides an engineering study that notes that its Post Falls counterproposal is properly spaced and in

9. Included with its counterproposal for the Channel 277A allotment to Troy, RPI filed comments that its reference point is the same as that proposed for Moscow, and it meets both minimum distance separation and city grade requirements. RPI points out that Troy is incorporated with a mayor, city council, and local police. It notes that Troy has grown from a 1990 Census population of 699 to more than 1000 persons and has no local broadcast outlet. It notes that an allotment to Troy, which would accommodate its first local aural transmission service, would trigger the "third" allotment priority, while an allotment to Moscow would trigger the lesser allotment priority (4), other public interest matters as a fifth local transmission service.

10. Siebert, proponent of allotting Channel 277A to Moscow, filed comments opposing RPI's counterproposal. Siebert notes that RPI is the licensee of an AM-FM combination in Pullman, Washington, which is located less than ten miles from Moscow and has an application for Pullman for another FM channel. He also notes that Troy is located only ten miles from Moscow. Siebert determined, however, that Channel 262A can be allotted to Troy and is available to serve that community. He, therefore, suggests that the Commission should allot Channel 262A to Troy and deny RPI's counterproposal with respect to Channel 277A. As to Rook's counterproposal, Siebert suggests that the allotments to Moscow and to Post Falls could coexist by use of directional antennas or through negotiation. He also suggests that Rook should not abandon Coeur d'Alene in favor of the small community of Post Falls, which is "well served by numerous broadcast services" licensed to the nearby communities of Coeur d'Alene and Spokane. Therefore, Siebert also urges the Commission to deny Rook's counterproposal to reallocate Channel 276C1 at Post Falls.

11. Rook filed replies to Siebert's comments on its counterproposal, noting that it is well established that Post Falls, a community it proposes to be allotted a channel to provide its first local service, is favored over a community like Moscow, already well-served by existing stations. Rook notes that its C1 allotment proposal would serve "nearly ten times as many people" as the Moscow proposal, and, therefore, its Post Falls proposal should prevail on that ground as well. As to RPI's Troy proposal, while Rook notes that the Channel 262A allotment to Troy proposed by Siebert should remove conflicts with Post Falls and Moscow, should it be necessary, in any event, to compare the Post Falls proposal with that of Troy, it argues that the Post Falls proposal should be favored. Based on a ten-to-one advantage in both the respective populations of Post Falls and Troy (currently "slightly

accord with the *Working Arrangement for the Allotment and Assignment of FM Broadcasting Channels 201-300 Under the Agreement Between the Government of the United States of America and Government of Canada Relating to the FM Broadcasting Service in the 88-108 MHz Frequency Band ("Arrangement")*. The Post Falls proposal would cause a short-spaced condition with the vacant allotment at Creston, British Columbia, causing the would-be protected contour of any Creston station operating on that allotment to overlap the interfering contour of the Post Falls station, resulting in an area of interference. However, that interference would fall entirely within the U.S. and short of the U.S.-Canadian border. This is acceptable according to the terms of the *Arrangement*.

over 1,000") and in the population of the coverage areas of the respective facilities at the two communities, the Post Falls proposal is superior. In summary, Rook concludes that Troy should not be granted a first local service preference, chiefly because of its small size.

12. *Discussion.* Upon careful review of the pleadings of all the parties, we will grant the requested allotment of Channel 221A at St. Maries to provide its first local FM service. We reject SPR's alternative proposal in MM Docket No. 96-249 that Channel 278A be allotted at St. Maries because no acceptable reference site is available. The denial of this alternative removes this alternative channel as the connection between that docket and MM Docket No. 96-259, in which Channel 277A is proposed at Moscow. Therefore, we will also grant the counterproposals in this latter docket, without reference to any channel request or suggestion made in MM Docket No. 96-249. That is, we will grant the upgrade of the station at Coeur d'Alene and reallocate the upgraded Channel 276C1 to provide a first local aural service at Post Falls, and will grant the allotment of Channel 262A at Troy for a first local aural service there. The reasons for these actions follow.

13. As an initial matter, we note that all locales proposed to receive new FM allotments must qualify as communities for allotment purposes. In addition to the varying arrays of indicia of community status presented by the proponents, each locale proposed to receive a first local aural service is also listed in the 1990 U.S. Census and is incorporated. This is generally sufficient to satisfy status as a community for allotment purposes. The places proposed to be allotted their first FM channels are St. Maries, Post Falls, and Troy, Idaho. We have determined that each of them has the status of a community for allotment purposes.

14. Next, we address a matter that will simplify our analysis herein. We reject SPR's suggestion that alternate Channel 278A be allotted to St. Maries in MM Docket No. 96-249 because it fails to specify a site that meets all the Commission's engineering criteria. Generally, the suitability of a site area is determined by whether a site can be located within an area that meets the minimum distance separation requirements of Section 73.207 and the city grade coverage and other requirements of Section 73.315. See *Creswell, Oregon*, 4 FCC Rcd 7040 (1989). The suitability of a site area also relates to the feasibility of using a particular area to accommodate an actual transmitter site, the theoretical or reference site also lying within that area. Here, the site area is unsuitable because the landowner states that it is not available for lease or sale. Moreover, Pentacle states that no electrical power is provided to the area in question and there is no road access. These contentions, unrefuted, place the feasibility of the site area in question. Also unchallenged is Pentacle's assertion that terrain blockage would prevent the achievement of city grade coverage from the closest available site area. Thus, we conclude that there is no site available for a Channel 278A allotment at St. Maries. The link between MM Docket Nos. 96-249 and 96-259, i.e. the mutual exclusivity between alternate Channel 278A at St. Maries and the counterproposal in MM Docket No. 96-259 to allot Channel 276C1 at Post Falls, thus, no longer exists. Accordingly, there is no connection between the two dockets and each will be evaluated separately without reference to the other docket.

15. For MM Docket No. 96-249, there remains the mutual exclusivity between commercial Channel 221A at St. Maries and NCE-FM Channel 220C2, the subject of the application for upgrade at Spokane. To resolve this conflict, we must comparatively evaluate them under Priority Four, none of the first three allotment priorities being applicable. First, the public interest generally favors the provision of a new primary service more than the expansion of an existing one. *See Benton, Arkansas, et al*, 2 FCC Rcd 1967 (1987), 3 FCC Rcd 4840 (1988), *recon denied*, 7 FCC Rcd 2555 (1992). Second, Channel 221A at St. Maries would provide a second local aural service and first local FM service to that community, whereas the upgrade at Spokane would provide an expansion of an existing NCE-FM service, which is one of Spokane's four NCE-FM services. Spokane also has ten commercial FM stations and eight AM stations. On balance, the public interest favors a second local aural service and first local FM transmission service at St. Maries (1990 population of 2442), particularly when compared with Spokane, a city with a 1990 Census population of 177,196 with numerous outlets of local self-expression. Our view is buttressed by the fact that, pursuant to a staff engineering analysis, the entire gain area for the NCE application is already covered by two other NCE-FM stations

16. As to WCC's pending application at Wilson Creek, there is no longer a conflict because of our earlier decision not to use alternate Channel 278A at St. Maries. Since this application has been held in abeyance pending the outcome of these proceedings, processing may resume upon finality of this *Report and Order*.

17. As to MM Docket No. 96-259, the counterproposal of Channel 277A at Troy conflicts with this docket's initiating proposal to allot Channel 277A at the community of Moscow, as well as with Rook's proposed reallocation of Channel 276C1 to Post Falls. These conflicts, however, may be resolved by Siebert's recommendation of an alternate channel claimed to be available for allotment at Troy. Our analysis has confirmed that Channel 262A is indeed available for use at Troy and that it complies with all spacing and city grade coverage requirements. We will, therefore, allot Channel 262A to Troy to provide that community with its first local aural service.

18. In order to resolve the remaining conflict between the Moscow proposal and the Post Falls counterproposal, we must comparatively evaluate them, provided, first, we make a determination that Rook's counterproposal entailing a change in the community of license, is in accord with Section 1.420(i) of the Commission's Rules. This rule permits, under limited circumstances, the reallocation of a channel from one community to another and the modification of a station's license to the new community without entertaining competing applications for the new channel. *See Modification of FM and TV Channels to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon granted in part*, 5 FCC Rcd 7094 (1990) ("*Change of Community*"). One of our chief concerns was the potential for migration of stations from underserved rural areas to well-served urban areas. *Change of Community* at 7096.

19. Here, we are concerned whether, under the Commission's allotment priorities,⁶ the change from Coeur d'Alene to Post Falls as new the community of license should result in a first local service preference for Post Falls over the Moscow proposal. This latter proposal would satisfy the fourth allotment priority, other public interest matters, because there are multiple local aural services in Moscow. Can a new Post Falls aural service be justified as a first local transmission service or should it be deemed as just another Spokane aural service? To make such an evaluation, we generally apply the criteria set out in *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951), *RKO General, Inc. ("KFRC")*, 5 FCC Rcd 3222 (1990), and *Faye and Richard Tuck ("Tuck")*, 3 FCC Rcd 5374 (1988), when a station is reallocating its channel and changing its community of license from a rural community located outside an urbanized area to a suburban community located within an urbanized area. Likewise, we have required a *Tuck* showing where a station proposes to reallocate its channel and change its community of license from a community located outside of an urbanized area to another community located outside but proximate to an Urbanized Area, provided it would place a city-grade signal (70 dBu) signal over 50% or more of the Urbanized Area. See *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10352, 10354 (Allocations Br. 1995). As we have stated, "[s]uch an approach strikes a reasonable balance between ensuring that rural stations do not migrate to urban areas in a manner inconsistent with the goals of Section 307(b) of the Communications Act and at the same time providing stations with the opportunity to change their communities of license if this would serve the public interest." *Id.* However, in this particular case we do not believe that a *Tuck* showing should be required based upon the degree of coverage presently provided by Rook's station to the Spokane Urbanized Area. As a Coeur d'Alene station, it already places a city-grade signal over 60% of the Spokane Urbanized Area. By upgrading at its current site and changing its community of license to Post Falls, which is not located in the Spokane Urbanized Area, it will increase its coverage to 100% of the Spokane Urbanized Area. We believe that this situation does not constitute a migration to an urbanized area and is similar to several recent cases where we have found that *Huntington and Tuck* were inapplicable. For example, in the recent *Notice of Proposed Rule Making* in MM Docket 99-245, we did not require a *Tuck* showing where a station proposed to change its community of license and increase its coverage over an urbanized area from 66.4% to 95%. See *Johnson City and Owego, NY*, 14 FCC Rcd 10585 (1999). See also *Dayton and Incline Village, NV*, 14 FCC Rcd 9386 (Allocations Br. 1999) (increase in coverage from 77.1% to 87.7% of urbanized area did not require *Tuck* showing to change community of license); and *Boulder and Lafayette, Colorado*, 12 FCC Rcd 583 (1997).

⁶ Conflicting sets of FM allotment priorities are comparatively considered under the guidelines set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The priorities are as follows:

- 1) First full-time aural service
 - 2) Second full-time aural service
 - 3) First local service
 - 4) Other public interest factors
- [co-equal weight is given to priorities (2) and (3)]

20. However, even applying the *Tuck* test, Post Falls is sufficiently independent of Spokane to warrant a first local service preference over Coeur d'Alene. To begin with, Post Falls is located 33.9 kilometers (21.1 miles) east of the city of Spokane and in a different state than Spokane. Post Falls has a sizeable population (7,349 from the 1990 U.S. Census), with a vigorous growth of 43% since 1990. It is incorporated, has an established local government with its own police force, fire department, and post office, and an established, comprehensive system of secondary public education. Post Falls has many diverse, and not insubstantial, businesses. The top ten businesses employ from 100 to 500 people each.

21. Having determined that the reallocation to Post Falls would result in a first local aural service, we next must consider whether Coeur d'Alene would lose its only outlet for local self-expression. The Commission has expressed its concern with a community being deprived of any local transmission service, in particular, a community's only local service. Coeur d'Alene, however, has a full-time operating AM station and a vacant but applied-for FM allotment. Therefore, Rook's counterproposal does not run afoul of the Commission's concerns with removing the last aural service in d'Alene. Therefore, we believe that reallocating Channel 276C1 to Post Falls and providing for a first local aural service to that community, while at the same time leaving Coeur d'Alene with a full-time transmission service and a vacant but applied for allotment to provide a second service, is a preferential arrangement of allotments.

22. Finally, when we consider the Moscow allotment of Channel 277A, we note that Moscow is already well served by its existing four local aural services. In comparing Moscow with Post Falls under the allotment priorities, the Moscow proposal loses to the counterproposal for Post Falls as a first local service. We will, therefore, deny Siebert's rulemaking proposal to allot Channel 277A to Moscow and grant the allotment of Channel 276C1 to Post Falls.

23. We, therefore, make these allotments in the public interest. We have made them such that as many of the conflicting proposals could be accommodated as feasible. We have done so in order to make FM service as widely available as possible in accord with the Commission's mandate under Section 307(b) of the Communications Act, as amended.

24. *Technical Summary.* Channel 221A can be allotted to St. Maries, Idaho in compliance with the Commission's minimum distance separation requirements, without a site restriction, with reference coordinates of North Latitude 47°18'54" and West Longitude 116°34'30". Channel 276C1 can be allotted to Post Falls, Idaho in compliance with the Commission's separation requirements at a site

⁷ We also reject Siebert's suggestion that Channel 277A at Moscow could coexist with Channel 276C1 at Post Falls using a directional antenna or through a negotiated arrangement. Use of these or other means, when appropriate, is authorized at the applications stage, but not during allotment proceedings.

restricted to 6.0 kilometers (3.7 miles) north of the community, with reference coordinates of North Latitude 47°39'35" and West Longitude 116°57'12". Channel 262A can be allotted to Troy, Idaho in compliance with the Commission's separation requirements at a site restricted to 7.7 kilometers (4.8 miles) east of the community, with reference coordinates of North Latitude 46°44'49" and West Longitude 116°39'59".⁸

25. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective November 26, 1999, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
St. Maries, Idaho	221A
Post Falls, Idaho	276C1
Coeur d'Alene, Idaho	272A
Troy, Idaho	262A

26. The window period for filing applications for Channel 221A at St. Maries, Idaho, and for Channel 262A at Troy, Idaho will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

27. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Rook Broadcasting of Idaho, Inc. for Station KCDA(FM), Coeur d'Alene, Idaho, IS MODIFIED to specify operation on Channel 276C1 at Post Falls, Idaho in lieu of Channel 276C2 at Coeur d'Alene, Idaho, subject to the following conditions:

⁸ Because St. Maries, Troy, and Post Falls are located within 320 km (199 mi) of the U.S.-Canadian border, concurrence of the Canadian government was sought and has been received for each of these allotments. Nevertheless, a short spacing exists between the Post Falls allotment and a Canadian vacant allotment. This, however, results in an area of interference that lies wholly within the U.S. and is acceptable under the *Arrangement*. See note 4, *supra*.

The allotment site for Channel 262A at Troy was found to be less restrictive than the site recommended by Siebert in its reply comments. The Siebert site is 9.6 km east of Troy.

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

28. IT IS FURTHER ORDERED, That the application (BPED-961210MC) filed by Spokane Public Radio, Inc. to upgrade its Station KSFC(FM), Spokane, Washington, by substituting Channel 220C2 for Channel 220A at Spokane, when considered as a counterproposal, is DENIED. The application will be referred back to the Audio Services Division for final disposition.

29 . IT IS FURTHER ORDERED, That the application (BPH-970227ID) filed by Wilson Creek Communications, L.L.C. to upgrade its Station KVYF(FM), Wilson Creek, Washington, by substituting Channel 278C1 for Channel 277C3 at Wilson Creek no longer will be held in abeyance upon finality in these proceedings.

30 . IT IS FURTHER ORDERED, That the rulemaking petition (RM-8970) filed by Darin L. Siebert to allot Channel 277A to Moscow, Idaho is DENIED.

31. Pursuant to Commission Rule Section 1.1104(3)(l), any party seeking a change of community of license of an FM allotment or an upgrade of an existing FM allotment, **if the request is granted**, must submit a rulemaking fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Rook Broadcasting of Idaho, Inc., licensee of Station KCDA(FM), is required to submit a rulemaking fee in addition to the fee required for the application to effect the upgrade at and the change in the community of license to Post Falls.

32. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

33. For further information concerning the above, contact J. Bertron Withers, Jr., Mass Media Bureau, (202) 418-2180. Questions relating to the application filing process for Channel 221A at St. Maries, Idaho or Channel 262A at Troy, Idaho, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**